

King County Specific Authority/Programs

King County Charter

The County is vested with broad legislative and regulatory authority as a “Home Rule” charter county pursuant to Article 11, Section 4 of the Washington Constitution. As a charter county, the County is authorized to determine and provide for the performance of “all county functions as provided [by] the charter,” subject only to the Constitution and the laws of the state. Thus, while the County “continue[s] to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law” on counties, the County’s powers of self governance, including those related to the exercise of general governmental and regulatory authority are broader than those which exist for non-charter counties under state law. *See e.g. Norco Construction Co. v. King County*, 29 Wn. App. 179, 627 P.2d 988 (1981); *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559, 611 P.2d 1227 (1980).

The County’s Charter includes provisions that address the County’s broad general governmental powers (Section 100); intergovernmental contracting authority (Section 120); legislative authority, including the adoption of comprehensive plans related to the present and future development of King County (Section 220.20); and capacity to act on an emergent basis to protect public health and safety (Section 230.30). The Charter also creates several Regional Committees that bring the County, its cities and others together to review and recommend important regional policies and plans for consideration and adoption by the County Council. One Regional Committee is specifically devoted to water quality issues. *See Section 270 et seq.*

The Charter also provides for the creation of individual departments in furtherance of these charter-based powers (Section 350). Among others, this authority has permitted the creation of the Departments of Construction and Facility Management; Development and Environmental Services; Natural Resources; Parks and Recreation; Public Health; and Transportation. The essential duties of all County agencies are set forth at King County Code (“KCC”) Chapter 2.16 (Administrative Offices and Executive Departments). The Charter also specifically addresses the assumption by the County of those governmental powers previously exercised by Metro, primarily those related to public transportation and water pollution abatement (Section 350.20.30.)

King County Development Standards

Many of the County’s proposed early actions are associated with specific standards governing land development within the unincorporated areas of King County. These portions of King County tend to be its least developed areas, so that regulation of unincorporated areas offers greater opportunities to protect existing, higher quality salmonid habitat. The County imposes many significant controls on land development. While the County does not regulate development activities within incorporated areas, many King County cities have adopted the County’s development standards, or

ones that are substantially similar. As noted in the Growth Management Act (GMA) discussion found later in this chapter, the County's development standards are required to be consistent with the County's Comprehensive Plan, and inter-jurisdictional consistency is required for local comprehensive plans throughout the region.

a. Sensitive Areas Ordinance, Chapter KCC 21A.24

The County's sensitive areas ordinance ("SAO") is found KCC Chapter 21A.24. The purpose of the SAO is to implement the goals and policies of the Washington State Environmental Policy Act, Chapter 43.21C RCW, and the King County Comprehensive Plan, both of which call for protection of the natural environment and the public health and safety. KCC 21A.24.010.

Sensitive areas covered by the SAO include areas that are important salmon habitat. For example, regulated sensitive areas include streams, wetlands, erosion hazard areas, landslide hazard areas, steep slopes, and flood areas. *See KCC 21A.24.080; KCC 21A.24.210 - .380.* Development proposals affecting streams must observe minimum buffer widths determined by the class of stream involved. KCC 21A.24.360. Those minimum buffer widths must be increased where necessary to protect streams, critical drainage areas, critical fish and wildlife habitat, and landslide or erosion hazard areas contiguous to streams. KCC 21A.24.360(C).

County authority under the SAO is implemented through the application of its standards to specific development proposals. The SAO does not allow approval of any permit or the issuance of any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement, without first assuring compliance with the substantive requirements of the ordinance. KCC 21A.24.020.

Only limited variances and exemptions from the SAO are available. Exemptions include emergency activities, limited public agency utility projects conducted using best management practices, historical agricultural practices, and land uses and activities that existed prior to November 30, 1998. KCC 21A.24.050. Variances are just as limited, and require showings of unnecessary hardship, unique physical limitations, and the like.

The SAO obligates the County to apply the most protective regulations available. Specifically, the SAO states that when any provision of any other chapter of the King County Code conflicts with the SAO, the provision which provides "more protection to environmentally sensitive areas shall apply, unless specifically provided otherwise in this chapter or unless such provision conflicts with federal or state laws or regulations." KCC 21A.24.020(D).

b. Clearing and Grading Code, KCC Chapter 16.82

The County's Clearing and Grading code is found at KCC Chapter 16.82. The purpose of the Clearing and Grading Code is to regulate the clearing and removal of vegetation, excavation, grading and earthwork construction

including cuts and fills, gravel pits, dumping, quarrying and mining operations within King County in order to protect public health, safety and welfare. KCC 16.82.010.

Among other goals, regulation under the Clearing and Grading Code is intended to minimize adverse stormwater impacts generated by the removal of vegetation and the alteration of landforms; protect water quality from the adverse impacts associated with erosion and sedimentation; minimize aquatic and terrestrial wildlife habitat loss caused by the removal of vegetation; protect sensitive areas from adverse clearing and grading activities; facilitate and encourage long term forest practice and agricultural production operations where appropriate; and minimize the adverse impacts associated with quarrying and mining operations. *Id.*

All clearing and grading activities are subject to the County's regulatory authority under the Clearing and Grading Code, unless specifically excepted by the code. Clearing and grading activities are defined to include: "The cutting or removal of vegetation or other organic plant material by physical, mechanical, chemical or any other means" and "any excavating, filling, removing of the duff layer, or combination thereof." KCC §16.82.020(E) and (N). Exceptions to coverage by the code are limited to low impact or otherwise permitted activities, such as basement excavations pursuant to a valid building permit; excavations less than five (5) feet in depth or 100 cubic yards; minor stream restoration projects for fish habitat enhancement under the SAO; and forest practices conducted pursuant to state law. KCC §16.82.050.

County authority under the Clearing and Grading Code is implemented through the application of its standards by the DDES to development proposals. The ordinance does not allow clearing or grading activities that "will adversely affect the character of the site for present lawful uses or with the future development of the site and adjacent properties for building or other purposes as indicated by the comprehensive plan, the shoreline master program, and the zoning code." KCC 16.82.060(D).

c. Stormwater Management (Surface Water Runoff Policy and Surface Water Design Manual), KCC Chapter 9.04

The County's Surface Water Runoff Policy is found at KCC Chapter 9.04, and implemented through application of the County's Surface Water Design Manual. The purpose of these provisions is to promote the public health, safety and welfare by providing for the comprehensive management of surface and storm waters and erosion control, targeted at preserving and utilizing the many values served by King County's natural drainage system, including open space, fish and wildlife habitat, recreation, education and urban separation. KCC 9.04.010. The requirements of KCC 9.04 are to be liberally construed to effectuate these purposes. KCC 9.04.192.

Drainage review is implemented by reviewing development proposals for compliance with KCC 9.04 and the Surface Water Design Manual. By their

terms, KCC 9.04 and the Surface Water Design Manual apply to a broad range of development and re-development proposals, including proposals that will:

- add 5,000 square feet or more of new impervious surface;
- construct or modify a drainage pipe/ditch that is 12 inches or more in size or depth or receives surface and storm water runoff from a drainage pipe/ditch that is 12 inches or more in size or depth;
- contain or be adjacent to a floodplain, stream, lake, wetland or closed depression, or a sensitive area as defined in KCC Chapter 21A.24, excluding seismic, coal mines and volcanic hazard areas;
- be located within a landslide hazard drainage area as mapped in the Surface Water Design Manual and would add 2,000 square feet or more of new impervious surface;
- be located within a critical drainage area;
- be located within a rural zoned area subject to area clearing limits under KCC 16.82.150C and would clear more than 7,000 square feet or 35% of the site, whichever is greater;
- be a redevelopment project proposing \$100,000 or more of improvements to an existing high-use site, or
- be a redevelopment project proposing \$500,000 or more of site improvements and would create 5,000 square feet or more of contiguous pollution-generating impervious surface through any combination of new and/or replaced impervious surface. KCC 9.04.030.

The code does not allow for approval of any permit or the issuance of any authorization for drainage review that does not meet certain core requirements. KCC 9.04.050. Those core requirements include assurance that the project's surface water controls will provide:

- discharge at the natural location,
- analysis of offsite impacts,
- flow control,
- a conveyance system to protect against flooding, erosion and structural failure,
- erosion and sediment controls,
- maintenance and operation of the facilities,
- financial guarantees and liability provisions, and
- water quality treatment facilities to treat polluted surface and storm water runoff. KCC 9.04.050.

Additional requirements apply to projects within specially protected areas of King County, such as projects within a designated critical drainage area, or an area included in an adopted master drainage plan, basin plan, lake management plan or shared facility plan. *Id.*

Only limited adjustments to the County's drainage review approvals are allowed. KCC 9.04.050(C). For example, if application of County standards would deny reasonable use of a property, then the best practicable alternative shall be applied, using the detailed adjustment process defined in the Surface Water Design Manual. *Id.*

Code Compliance (Enforcement), KCC Title 23

The County's process for achieving code compliance is codified at KCC Title 23. The purpose of code compliance is to identify processes and methods to encourage compliance with laws and regulations adopted by the County pursuant to Article XI, Section 11 of the Washington Constitution and other state laws to promote and protect the general public health, safety and environment of county residents. KCC 23.01.010.

While the express intent of Title 23, and a key commitment of the County, is to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public, the Code's compliance requirements do not place responsibility for code compliance or enforcement upon the County in any particular case, or create any duty on the part of the County to any particular person or class of persons. *Id.*

The County focuses on voluntary compliance measures as a first priority, followed by civil, and even criminal penalties. *See KCC 23.02.040.* Each County department with authority over regulatory programs holds enforcement authority for those programs. For example, DDES administers the Clearing and Grading Ordinance and would pursue persons found to be in violation of that ordinance using the processes set forth in KCC Title 23.

Other King County Programs

The County administers many other programs that provide protection for the environment and wildlife. Such programs include, but are not limited to:

- Regulation of public water and sewer systems, including the location, construction and maintenance of on-site sewage disposal systems, and planning for water supply needs. *See KCC Title 13 (Water and Sewer Systems).*
- Regulation of the County wastewater (sewage) treatment system, including regulation of the nature, quality and quantity of substances that may be discharged into the system, and inspection of regulated facilities to ensure compliance with applicable industrial pretreatment regulations. *See KCC Title 28 (Metropolitan Functions).*
- Regulation of local hazardous waste management plans targeted at eliminating illegal disposal into sanitary sewers, solid waste facilities, stormwater facilities, or elsewhere. *See RCW 70.05.060; RCW 70.95.160; RCW 70.105.220.*
- Review of the design of wastewater facilities, as delegated to the County by the State Department of Ecology ("Ecology"). *See RCW 90.48.110.*

- Application of road construction standards to road construction and maintenance efforts, and regulation of public right-of-way for installation of public utilities. *See KCC Title 14 (Roads and Bridges); KCC Chapter 14.42 (King County Road Standards).*
- Maintenance of County park facilities, which may include salmon habitat areas. *See KCC 2.16.050.*

State Programs/Legislation Implemented by King County

Growth Management Act (“GMA”), Chapter 36.70C RCW

The Growth Management Act (GMA), Chapter 36.70A RCW, was enacted in 1990 to coordinate and plan for growth, while also providing for the conservation and wise use of land, the protection of the environment, healthy economic development, and the preservation of the health, safety and high quality of life of the state’s citizens. RCW 36.70A.010. Specific statutory goals of the GMA include reduction of development sprawl, preservation of open space to conserve fish habitat, and protection of the natural environment, including water quality and quantity. RCW 36.70A.020. In furtherance of these goals, the GMA offers many important tools that allow – indeed require – coordinated land use planning throughout the Puget Sound region. The County will continue to fully utilize those tools.

The GMA requires counties and cities throughout the Puget Sound region to adopt binding comprehensive land use plans and the more detailed development regulations that are necessary to implement them. RCW 36.70A.040. Comprehensive plans must address a number of required land use and environmental elements in furtherance of the GMA’s planning goals. RCW 36.70A.070. In addition, counties and cities planning under the GMA are required to adopt development regulations to protect natural resource lands and critical areas within their jurisdictions (RCW 36.70A.060). Counties must designate “urban growth ... areas within which urban growth shall be encouraged and outside of which growth can occur only if it’s not urban in nature” (RCW 36.70A.110).

The King County Comprehensive Plan was adopted in November 1994. It has been amended on several subsequent occasions to increase the environmental protections it affords. The GMA mandates that local development regulations implement the policies of the Comprehensive Plan. RCW 36.70A.040. That has also occurred.

The GMA requires the coordination of the comprehensive plans of counties and cities in the Puget Sound region. The state reviews and may comment on all proposed local comprehensive plans and development regulations (RCW 36.70A.106), and state agencies are thereafter bound by them (RCW 36.70A.103). More importantly, every comprehensive plan must be both coordinated and consistent with the comprehensive plans of other jurisdictions “with which the county or city has, in part, common borders or related regional issues.” RCW 36.70A.100.

The GMA includes additional legal tools to ensure coordination and consistency of land use planning and enhancement of the natural environment on a regional level. RCW 36.70A.210 requires counties planning under the Act to adopt County-wide Planning Policies (“CPPs”). A CPP is a written policy statement and guiding framework for adopting county and city comprehensive plans. CPPs are intended to “ensure city and county comprehensive plans are consistent as required in RCW 36.70A.100.” Adopted by county legislative authorities, the GMA requires counties to prepare CPPs in cooperation with the cities through a collaborative process.

In King County, CPPs were developed through the King County Growth Management Planning Council (GMPC), which consists of elected officials from the County, the City of Seattle and the suburban cities within King County. Phase 1 King County CPPs were adopted in July 1992. Phase 2 CPPs were adopted by the County in August 1994 and ratified by the requisite number of cities as of November 1994. Many CPPs address land use and environmental issues important to the conservation of salmonids and their habitat. In addition, the County’s CPPs require that all jurisdictions cooperate in developing comprehensive plans that are consistent with those of adjacent jurisdictions and the CPPs themselves. *See Policy LU-37.*

Because of their contiguous, heavily populated nature, RCW 36.70A.210 also requires the Puget Sound counties to adopt Multi-county Planning Policies (“MPPs”). To implement this requirement, the Puget Sound Regional Council (PSRC), which consists of the four Puget Sound region counties, their cities, and tribal interests, has adopted a number of land use, environmental and transportation related policies, including VISION 2020 (a growth and transportation strategy for the Puget Sound region) and a Regional Transportation Plan.

Shoreline Management Act (“SMA”), Chapter 90.58 RCW

The State Shoreline Management Act (“SMA”), Chapter 90.58 RCW, seeks to protect and manage the shorelines of the state. *See RCW 90.58.020.* The SMA obligated the County (and all local governments of the state) to implement the Act essentially as an additional local development regulation. RCW 90.58.020; RCW 90.58.060. KCC Title 25.04 contains the County’s shoreline regulations; the County’s Shoreline Master Program exists as a separate document.

SMA jurisdiction covers all shorelines of the state and their associated shorelands. RCW 90.58.030. The shorelines of the state include streams with a mean annual flow of 20 cfs or more and lakes of greater than 20 acres in area. *Id.* Associated shorelands include lands extending landward for 200 feet in all directions from the ordinary high water mark, floodways and contiguous floodplain areas landward 200 feet from the floodways, and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the SMA. *Id.* Further, sites that include some land within the shoreline jurisdiction together with upland areas are also required to undergo SMA review.

Under the SMA, uses proposed within the shoreline environments must comply with permitting and development requirements set forth in the Shoreline Master Program and Shoreline regulations. The County Shoreline Master Program classifies County shoreline environments according to the protections each deserves. Shoreline classification provides for greater protection for the most environmentally sensitive shoreline areas. The SMA and the County Shoreline Master Program both require that no development be undertaken on the shorelines of the state absent full compliance with those authorities. RCW 90.58.140; KCC 25.04.030.

State Environmental Policy Act (“SEPA”), Chapter 43.21C RCW

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, obligates the County to integrate environmental considerations into its planning and decision-making processes. RCW 43.21C.030. In addition, SEPA grants the County substantive authority to condition or deny proposals based on identified environmental impacts.

King County’s SEPA obligations and authorities are exercised by its SEPA “responsible official.” The SEPA responsible official for a private or County proposal is the director of the County department exercising initial jurisdiction over the proposal. KCC 20.44.020. That agency is the SEPA “lead agency.” *Id.* For example, the director of the Department of Development and Environmental Services is the responsible official for private land development proposals.

a. Procedural SEPA requirements

SEPA obligates the County to include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

- i. the environmental impact of the proposed action;
- ii. any adverse environmental effects which cannot be avoided should the proposal be implemented;
- iii. alternatives to the proposed action;
- iv. the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and
- v. any action should it be implemented. RCW 43. any irreversible or irretrievable commitments of resources which would be involved in the proposed 21C.030(c).

SEPA obligates the County to evaluate County actions that qualify as “major actions significantly affecting the quality of the environment” for their potential impacts to elements of the natural environment. Major actions significantly affecting the quality of the environment are broadly defined by state regulation to include both project and non-project actions, which

have a reasonable likelihood of more than a moderate adverse impact on environmental quality. *See* WAC 197-11-704 (“action”), 197-11-764 (“major action”), 197-11-794 (“significant”).

The ultimate environmental document prepared may be a Determination of Non-significance (DNS), a mitigated Determination of Non-significance (MDNS), or an Environmental Impact Statement (EIS). Preparation of an EIS is a more involved procedure. The County has the authority to require an EIS when, after appropriate review of environmental information, the lead agency reasonably believes that the proposal may have a significant adverse impact. *See* KCC 20.44.040; WAC 197-11-330(4). One of the factors a lead agency shall account for when determining an impact’s significance is that a proposal may, to a significant degree, adversely affect endangered or threatened species or their habitat. WAC 197-11-330(3)(e)(ii).

b. SEPA categorical exemptions

At present, the state designates actions not likely to have significant environmental impacts as categorically exempt from SEPA. *See* WAC 197-11-800. These actions include items such as the development of four or fewer housing units, and commercial structures less than 4,000 square feet with parking for 20 vehicles. *Id.* Local jurisdictions can increase these minimums up to a designated maximum, such as 20 housing units. *Id.* For example, the County has chosen to increase the exemption level for housing from four to eight units. KCC 20.44.040. The County also has the authority to designate certain categorical exemptions as inapplicable within critical areas that have been properly designated under the GMA. WAC 197-11-908.

c. Substantive SEPA authority, RCW 43.21C.060

In addition to obligating the County to consider environmental impacts, SEPA grants the County discretionary authority to condition or deny proposals based on adverse environmental impacts. RCW 43.21C.060; WAC 197-11-660; KCC 20.44.080. Such “substantive” SEPA authority has been used by local jurisdictions as the “first line of offense” in implementing new regulatory limitations. For example, eastside King County cities have used such authority to control phosphorus in site runoff prior to adopting phosphorus control standards, and to impose mitigation fees for transportation impacts prior to the adoption of a formal impact fee system.

Mitigation measures or denial based on the County’s substantive SEPA authority must be based on formally adopted policies, plans, or regulations. WAC 197-11-660. The County has adopted the following policies, plans, rules and regulations, and all amendments thereto, as potential bases for the exercise of the County’s substantive authority under SEPA:

- The policies of the State Environmental Policy Act, RCW 43.21C.020.
- The King County Comprehensive Plan, its addenda, and revisions and community and subarea plans and housing report, and surface water management program basin plans, as specified in KCC 20.12.

- The King County Zoning Code, as adopted in KCC Title 21A.
- The King County Agricultural Lands Policy, as adopted in KCC 20.54 and KCC Title 26.
- The King County Landmarks Preservation Code, as adopted in KCC 20.62.
- The King County Shoreline Management Master Plan, as adopted in KCC Title 25.
- The King County Surface Water Runoff Policy, as adopted in KCC 9.04, including the Covington Master Drainage Plan, as adopted in KCC 20.14.
- The King County Road Standards, 1986 Update, as adopted in KCC 14.42.
- The Comprehensive Plan for Transportation adopted by Resolution No. 6617 of the Council of the Municipality of Metropolitan Seattle (“Metro”) and readopted and ratified by the County Council in KCC 28.01.030.
- The Comprehensive Sewerage Disposal Plan adopted by Resolution No. 23 of the Metro Council and readopted and ratified by the County Council in KCC 28.01.030.
- The rules and regulations for construction and use of local sewage facilities set forth in KCC 28.81 through 28.84.
- The rules and regulations on the consistency of sewer projects with local land use plans and policies set forth in Ordinance 11034, as amended.
- The rules and regulations for the disposal of industrial waste into the sewerage system set forth in Ordinance 11034, as amended.
- The Duwamish Clean Water Plan adopted by the Metro Council and readopted and ratified by the County Council by Ordinance 11032, section 28, as amended.
- The Washington Department of Ecology’s Best Management Practices for the Use of Municipal Sludge.

For proposals within urban growth areas as defined under the GMA, substantive SEPA authority to condition or deny new development proposals or other actions, is intended for use only in cases where specific adverse environmental impacts are not addressed by the County’s development standards (including the SAO, KCC 21A.24), or where unusual circumstances exist. KCC 20.44.080(C).

For proposals outside of urban growth areas, the County may conclude impacts are adequately addressed by the applicable development regulations. If they are not, however, the SEPA responsible official must apply mitigation consistent with the applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan or other local, state or federal rules or laws.

Any mitigation measures imposed through substantive SEPA authority must be related to specific adverse environmental impacts clearly identified in an environmental document, and the mitigation measures must be reasonable and capable of being accomplished. WAC 197-11-660(1)(b).

To deny a proposal using substantive SEPA authority, the County must conclude that the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS and that reasonable mitigation measures are insufficient to mitigate the identified impact. WAC 197-11-660(1)(f). Thus, outright project denial is available only for projects with sufficient environmental impacts to require preparation of an EIS.

SEPA requires a procedural analysis of the potential environmental impacts of an action, and allows conditioning or denial of a proposal, based on a substantive SEPA policy, when that procedural review reveals that significant, unmitigated environmental impacts will result.

Federal Programs/Legislation Affecting King County

The County is obligated to comply with federal environmental laws, many of which have aspects affecting salmonids and their habitat. For example, pollution control and hazardous waste clean-up statutes affect the quality of regional waters. In addition to the ESA, the federal Clean Water Act is the most important federal statute obligating and authorizing County actions relevant to salmonids and their habitat.

Clean Water Act, 33 U.S.C. §1251 et seq.

The purpose of the Clean Water Act (CWA), 33 U.S.C. §1251 *et seq.*, is to restore and maintain the chemical, physical and biological integrity of the nation's water. 33 U.S.C. § 251. The CWA includes three programs directly related to the County's role in conserving salmonids and their habitat: Establishment of effluent standards for discharge of pollutants, establishment of state water quality standards, and the National Pollutant Discharge Elimination System ("NPDES") permit program to control pollutant discharges. *See e.g. 33 U.S.C. §1311, 1313, 1342.* The County has accepted its obligation to implement Clean Water Act and state water pollution control statutes (Chapter 90.48, RCW). *See KCC 9.12.005.*

The County also is obligated to comply with its wastewater NPDES Municipal Stormwater General Permit under the NPDES program established by 33 U.S.C. §1342. Other activities within King County, such as construction and sand and gravel mining, are also required to obtain NPDES discharge permits through Ecology.

In addition, although it is technically a state obligation to set Total Maximum Daily Loads (TMDLs) for CWA section 303(d) listed waters, the County has begun working cooperatively with the State Department of Ecology to establish those standards within King County.